Amendments to the Drawings:

The drawing sheet attached in connection with the above-identified application containing Figures 4 and 5 is being presented as a new formal drawing sheet or sheets to be substituted for the previously submitted drawing sheet or sheets. The drawing Figure 4 has been amended. Appended to this amendment is an annotated copy of the previous drawing sheet which has been marked to show changes presented in the replacement sheet of the drawing.

The specific change which have been made to Figure 4 is the changing of identifier "30" to "36".

REMARKS

Applicant respectfully requests reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

Claims 21, 34, 41, 53 and 57 are currently being amended.

Claims 35 and 54 are requested to be cancelled.

This amendment adds, changes and/or deletes claims in this application. A detailed listing of all claims that are, or were, in the application, irrespective of whether the claim(s) remain under examination in the application, is presented, with an appropriate defined status identifier.

After amending the claims as set forth above, claims 21-34, 36-53 and 55-59 are now pending in this application.

In the February 1, 2007 Office Action, the Examiner objected to Figure 4 of the drawings, taking the position that numeral "30" should be replaced with "36". In response to this objection, Applicant has made the change suggested by the Examiner.

The Examiner rejected claims 21-22, 25, 27-28, 30-32, 34, 38-42, 45, 47, 49-51, 53 and 57-59 under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 7,142,895 (Heatley). In making these rejections, the Examiner has asserted that all of the features of these claims can be found in Heatley. For the following reasons, Applicant respectfully traverses these rejections.

As is evident from the abstract of Heatley, this reference discloses a mobile telephone and system that is configured to detect when the telephone's battery voltage has fallen below a certain level, after which the mobile telephone sends a message to the associated mobile network. In response to this message, the mobile network sets a certain flag in the user's profile. Thereafter, if a new call or a message is received by the network that is intended for the mobile telephone, the network automatically sends a response announcement to the caller.

In contrast, independent claims 21 and 41 (and the respective dependent claims 22-33 and 42-50) describe a method and apparatus by which a request for data service is received for an intended receiving station, with the request indicating a service delivery mode that is associated with the data service. The data service is then routed to an intended receiving station or terminated end point based upon the associated service delivery mode. Importantly, the service delivery mode is associated with the data service via an indication in the request.

In rejecting claims 21 and 41, the Examiner asserted that Figure 3 of Heatley taught a delivery mode 70 associated with various data services. However, as described in column 7, lines 5-29 in Heatley, this information is stored as part of a portfolio which is set by the mobile telephone, i.e., the intended recipient of a later call. In other words, Heatley teaches that it is the receiving device itself that independently sets the delivery mode, without regard to any data service that is being received by the mobile telephone at that time. This point is clearly demonstrated at column 7, lines 5-29 of Heatley. In this section, the "service delivery mode" relied upon by the Examiner is discussed as being part of a user profile 68 which is clearly identified as containing user specific information as is discussed elsewhere in Heatley (e.g., column 4, line 57-column 5, line 7). This profile information, and therefore the "delivery mode" of Heatley, is set by the user and is not previously associated with any request for data service from a remote caller. This is significantly different from independent claims 21 and 41, which have the delivery mode associated with the data service in the request.

In order to clarify the above difference between independent claims 21 and 41 in Heatley, Applicant has amended these independent claims to more particularly describe the request as indicating the service delivery mode that is associated with the data service. For the reasons discussed above, this simply is not present in Heatley.

In rejecting independent claims 38 and 57 and their respective dependent claims 39-40 and 58-59, the Examiner relied upon column 5, line 8 to column 6, line 32 for the proposition that Heatley teaches a user interface configured to both alert a user upon receipt of an indication and receiver response to the alert from a user. However, the section teaches nothing of the sort. Column 5, line 8-column 6, line 32 teaches a conventional user interface

which enables a user to set and/or modify various user profiles for the handling of subsequent data, with this profile being transferred to the network. However, this section does not provide any discussion whatsoever about having the user interface both alert a user about a subsequent incoming indication, or having a user respond to it. At most, column 6, lines 27-32 discuss a potential alert feature of contents such as an SMS message. However, this section teaches nothing about having the user respond to this message. In contrast, claim 38 explicitly requires the requesting of a response regarding acceptance of the data service from a user of the receiving station (if the service is in a foreground service delivery mode). Similarly, claim 57 requires the presence of a user interface that configured to receive such a type of response from the user. Heatley is simply silent as to these features.

In response to the Examiner's rejections of independent claims 34 and 53 and their respective dependent claims 35-37 and 54-56, Applicant has amended the independent claims to more particularly describe the processing of the data service in a manner based upon whether the service delivery mode is a background service delivery mode, a maintenance service delivery mode, a diagnostic service delivery mode, or a foreground service delivery mode, while canceling claims 36 and 54. The different processing of the data service based upon which of these types of data services is used is not taught or suggested in Heatley, nor has the Examiner asserted that these modes are taught therein. As such, these claims are also allowable over Heatley.

For all of the above reasons, Applicant submits that Heatley fails to teach or suggest one or more features in each of claims 21-22, 25, 27-28, 30-32, 34, 38-42, 45, 47, 49-51, 53 and 57-59 (as amended where appropriate), thereby overcoming the Examiner's rejection of these claims under 35 U.S.C. §102(e).

In addition, the Examiner rejected claims 23-24, 26, 29, 33, 35-37, 43-44, 46, 48, 52, and 54-56 under 35 U.S.C. §103(a) as being unpatentable over Heatley in view of U.S. Patent No. 6,687,356 (Glitho et al.) Applicant traverses these rejections for the following reasons.

First, with regard to claims 23-24, 26, 29, 33, 43-44, 46 and 48, Applicant notes that these claims each depend upon independent claims 21 or 41. As discussed previously, both

of these claims describe having a service delivery mode associated with data service via an indication in a request for effectuation of the data service, and this feature is entirely absent from Heatley. Furthermore, Glitho et al. completely fails to cure this deficiency. Glitho et al. teaches a device-aware service provisioning system and method in a hybrid/integrated telecommunications network having both packet switched and circuit switched portions. As part of this system, what is referred to as a "value-added services infrastructure" is used to perform different service actions relating to a communication based upon a profile set by the user. Once again, however, even if the features and/or qualities set by the profile constituted "service modes," these are set by the user and are not indicated in a request for effectuation of data service. This is demonstrated by Figure 6 and column 6, line 62-column 1, where it is clearly noted that the basic call set up 602 is initiated *before* the user profile is retrieved at 604, which is what the Examiner apparently believes to be the defined service delivery mode. In contrast and as discussed previously, these claims have the service delivery mode associated with the request for effectuation of service, not the user profile. Therefore, Glitho et al. cannot cure the deficiencies of Heatley with regard to any claims which depend upon on independent claims 21 or 41, namely claims 23-24, 26, 29, 33, 43-44, 46 and 48.

Second, as noted previously, Applicant has amended independent claims 34 and 53 to more particularly describe the processing of the data service in a manner based upon whether the service delivery mode is a background service delivery mode, a maintenance service delivery mode, a diagnostic service delivery mode, or a foreground service delivery mode. Contrary to any assertions by the Examiner, these amendments not only distinguish these claims and dependent claims 35-37 and 54-56 over Heatley, but they also render these claims clearly patentable over Heatley even when combined with Glitho et al. As implicitly acknowledged by the Examiner in the February 1, 2007 Office Action, Heatley fails to teach or disclose any of the service delivery modes identified in these claims. The Examiner has asserted that Glitho et al. cures these deficiencies. Applicant disagrees on a number of grounds. For one, Glitho et al. is completely silent as to maintenance service delivery and diagnostic service delivery modes, which now are affirmatively claimed in independent claims 34 and 53. These claims, as amended, require the processing of the data service in a manner based on whether the service delivery mode is a background service delivery mode, a

maintenance service delivery mode, a diagnostic service delivery mode, and a foreground service delivery mode. In other words, the system and method of these claims must be capable of processing the data service regardless of whether the service delivery mode is *any* of these four modes. As such, the maintenance and diagnostic service delivery modes cannot simply be ignored, but instead must be found in the prior art. However, Glitho et al. neither teaches nor even suggests either of these two modes.

In addition to the above, the Examiner's assertions that Glitho et al. teaches a background delivery service mode is also incorrect. As is discussed in paragraph [0035] of the present application, a background delivery mode is a mode which permits effectuation of a data service with a receiving station irrespective of the availability of a receiving party to accept delivery of a data service. In other words, if a data service intended for a receiving station is associated with a background delivery mode, then the service is provided to that particular station regardless of whether the recipient is available. This is not what occurs in Glitho et al. Instead, Glitho et al. specifically teaches (and the Examiner relied upon) features such as Call Forward Unconditional (CFU) and Call Forward Busy (CFB) features that serve to send the data service to a different device. These features do not constitute a background delivery mode, as this term is used by Applicant and, in fact, paragraph [0042] of the present application specifically ties such features to a foreground delivery mode, *not* a background mode. Therefore, the device specific profile relied upon by the Examiner cannot constitute a background delivery service mode.

In light of the above, Applicant submits that (1) Glito et al. fails to cure the deficiencies of Heatley and (2) even if such deficiencies were curable, Glito still fails to teach three of the four delivery modes described in several of the claims at issue. As such, Applicant submits that all of the claims rejected based upon Heatley in view of Glitho et al. are patentable over these references.

Applicant believes that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 10-0741. Should no proper payment be enclosed herewith, as by a check or credit card payment form being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

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